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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,015	10/03/2001	Paul Vegliante	2112-342.1 US	2684

7590 09/08/2005  
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EXAMINER

HAMILTON, ISAAC N

ART UNIT PAPER NUMBER

3724

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/970,015

Applicant(s)

VEGLIANTE ET AL.

Examiner

Isaac N. Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7,11-14,16-23,35-40 and 42-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 11-14, 16-23, 35-40 and 42-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Rejections made under 35 USC 112 are hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-7, 11-17, 20-23, 35-40 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas. Lucas discloses everything as noted in Diagram 1, and discloses clinging properties in column 3, line 8; channel 13; bottom edge of upper portion of blade housing protrudes on either side of blade in figure 3; end surface of upper portion is rounded and inclined upward as shown in figure 2; tracking device 34; tubular base 31; channel has tubular shape as shown in figure 3; Lucas does not disclose materials having hardness in the shore A range; that are non-porous; that are smooth; made of rigid PVC, acetal, silicon, plastic, rubber, acrylic, polyvinyl chloride comprising at least 10% plasticizer, silicon elastimer, and combinations thereof; and being flexible. It would have been obvious to one of ordinary skill in the art to provide the elements mentioned above for the purpose of making the apparatus in Lucas more durable for re-use. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Note in claims 7, 38 and 39 that coextrusion is a process that is well known in the manufacturing of the materials mentioned above. In further support of Examiner's position that

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the rail is made of a known material, Ooyama et al (1984-026874) shows a urethane tape with a tackifier that is at least 10% plasticizer as is shown in the abstract.

4. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas as applied to claim 1, and further in view of Keene et al (3,277,760), hereafter Keene. Lucas discloses channel 13; pair of rails, upper section and lower section shown in Diagram 1 below. Lucas does not disclose a protrusion and does not disclose a blade housing that snap fits into a protrusion. However, Keene teaches protrusion 18, 29, 40, and discloses blade housing 40 that snap fits into the protrusion. It would have been obvious to provide a blade housing that snap fits into a protrusion in Lucas as taught by Keene in order to prevent the blade housing from sliding out of the elongated rail base.

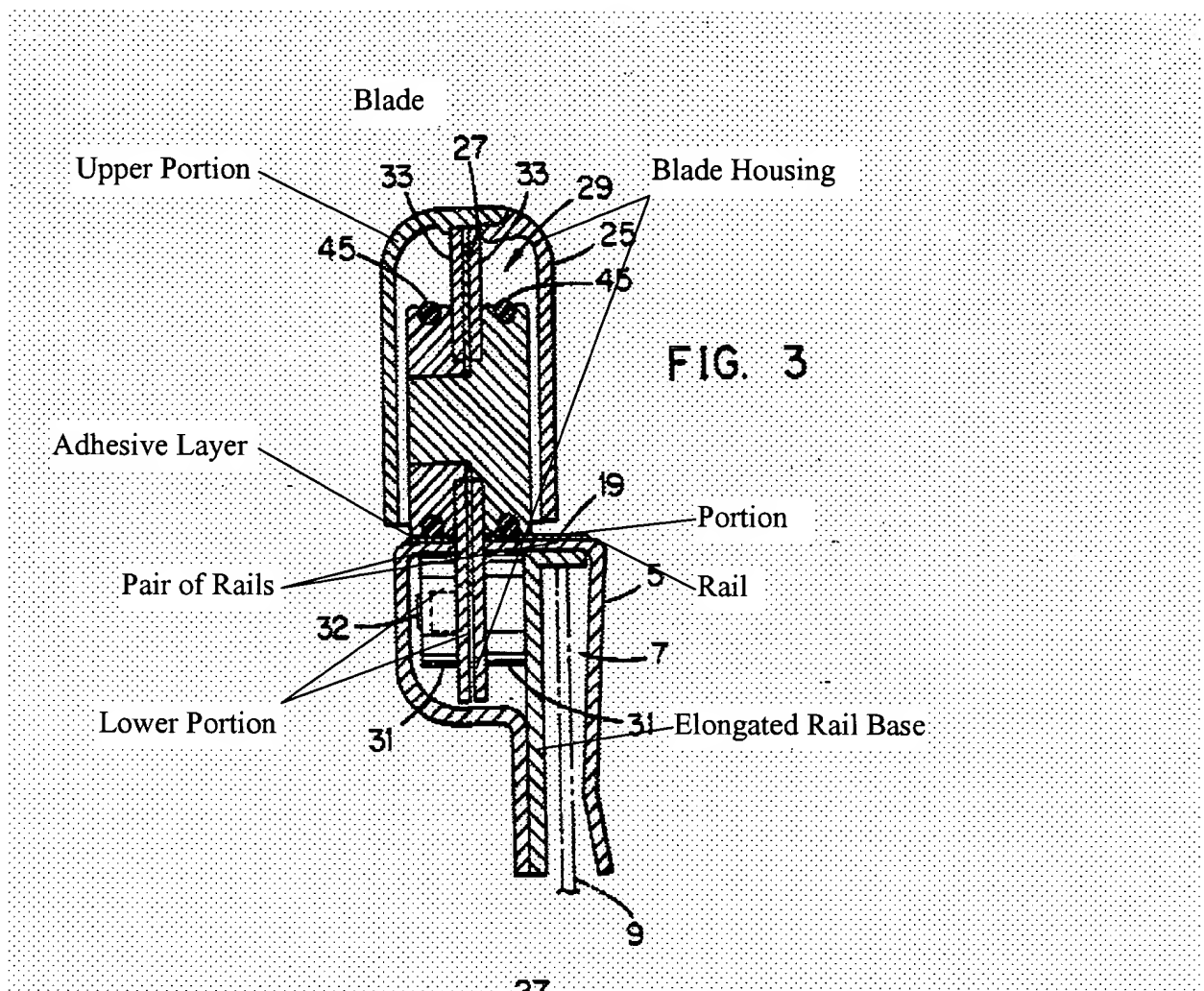


Diagram 1. Figure 3 in Lucas.

### **37 CFR 1.132 Declaration**

5. The declaration filed under 37 CFR 1.132 by Ian Kaiser is insufficient to overcome the rejections made above under 35 USC 103(a). The results of the experiment using the star cutter similar to the one disclosed in Lucas, Jr. et al. are flawed because it is possible that the star cutter used by Mr. Kaiser was of a thickness that is greater than the thickness used in Lucas, Jr. et al. If the star cutter of the experiment is of greater thickness than that used in Lucas Jr. et al., then there is more surface area exposed to the plastic wrap creating a “dull” cutting tool. The

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thickness of the star cutting tool in Lucas, Jr. et al. is very small as shown in figures 3 and 4, and therefore would pierce through the plastic wrap quite easily as described in column 3, lines 20-22.

***Response to Arguments***

6. Applicant's arguments filed 06/20/05 have been fully considered but they are not persuasive. Applicant asserts that Lucas, Jr. et al. do not teach rails formed of a material to provide cling properties to plastic wrap. It is believed that in column 3, lines 1-8, Lucas, Jr. et al. discloses that the rails are formed with urethane tape or coatings that provide cling properties to film material. Film material is further defined as plastic wrap or aluminum foil in column 3, line 24. Applicant asserts that Lucas, Jr. et al. uses O-rings to provide friction during cutting for adherence of the film to the high friction surface. It is believed that the high friction surface 19 in Lucas, Jr. et al. provides cling properties to film material regardless of whether or not O-rings are used with the cutting device; moreover, the claim limitations do not preclude the present invention from having O-rings. Applicant asserts that Lucas, Jr. et al. does not teach or suggest that the rail is made of plastic, rubber, vinyl, acrylic, polyvinyl chloride, silicon elastimer or combinations thereof. It is believed that tackifiers are used with urethane to make plastic tapes. Applicant asserts that the blade disclosed in Lucas, Jr. et al. does not cut plastic wrap. It is believed that in column 1, lines 5-9, Lucas, Jr. et al. discloses cutting plastic wrap and recites, "The present invention is directed to a film cutting method and apparatus and, in particular, to a star wheel cutting device in combination with a cutting guide to sever film material, such as foodservice wrap." Applicant asserts that Lucas, Jr. et al. does not disclose other material properties pertaining to the rail. It is believed that changing these material properties are well

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know in the art as a matter of design choice in order to make the apparatus more durable for re-use. Co-extrusion is a well known method of making rails for this type of cutter, moreover, the method that is used to make the apparatus does not further limit the structure of the rail.

Applicant asserts that Lucas, Jr. et al. does not disclose a bottom edge of an upper portion of a blade housing protrudes on either end from the blade and an end surface of the upper portion of the blade housing being rounded and inclined upwardly and from either end of the bottom edge. It is believed that figure 2 shows upper portion 25 has a bottom edge protruding on either end of blade 27 at the bottom edge, and that the end surface of upper portion 25 is rounded and inclined upward at either end of the bottom edge due to the rounded corners of the upper portion 25.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday through Friday between 8am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IH  
September 6, 2005



KENNETH E. PETERSON  
PRIMARY EXAMINER